

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
vs.)	No. 4:04 CR 298 ERW
)	
RICHARD RUSSELL,)	
)	
Defendant.)	

SENTENCING MEMORANDUM

The presentence report reflects a total offense level of 19 and a criminal history category of VI with a guidelines imprisonment range of 63 to 78 months. Defendant respectfully requests that the Court depart downward from this advisory guideline range based on two important factors: one having to do with defendant's diminished capacity; and the second having to do with the fact that criminal history category VI significantly overrepresents the seriousness of Mr. Russell's criminal history.

The presentence report in paragraphs 65 through 75 recounts a mental health history for defendant extending back approximately 10 years. While the presentence report was accurate when written, the information in paragraph 65 is not currently correct. Between the time of his plea and the sentencing date by order of this Court, Mr. Russell was transported to the Federal Medical Center where he was again placed on medication for depression. Diagnoses in his case range

from schizophrenia to personality disorders. Reading through the various diagnoses it seems that Mr. Russell presents a troubled picture that no one has been able to accurately put their hands on. He has numerous suicide attempts and reports hearing voices.

Mr. Russell's criminal history score consists primarily of disorderly conducts at John Cochran VA Hospital which grew out of charges brought against him for theft of VA services on which the undersigned represented him. Mr. Russell had checked himself in to the VA's inpatient program substance abuse program using a false name. His ruse was discovered, he was discharged from the drug treatment program and was charged with theft of government services. Upon his release on probation Mr. Russell immediately returned to drug abuse and on numerous occasions went to the John Cochran Hospital on North Grand Ave. in St. Louis making threats against the individual who had discovered his use of a false name to gain admission to the drug treatment program. These disorderly conduct charges result in a total of 8 criminal history points, the theft of VA services to gain admission to the drug treatment program is another two criminal history points. These matters comprise 10 of Mr. Russell's 14 criminal history points. Mr. Russell is placed by this computation in the very highest criminal history category. While there have been statements made by Mr. Russell while he was intoxicated about the use of a firearm he has never been apprehended in possession of a firearm or used one during the commission of any prior offense nor the present offense. His actions in the present case were at best a pitiful attempt at a robbery: walking into

a post office and saying that he wanted some money. The clerk was apparently so unimpressed that she left her station and went to the back contacting the station manager, the police were called while Mr. Russell remained in the post office lobby. Prior to the commission of this attempted robbery Mr. Russell had been living in a homeless shelter.

Section 4A1.3, a policy statement of the advisory Guidelines, recognizes that "There may be cases where the Court can concludes that a defendant's criminal history category significantly over-represents the seriousness of a defendant's criminal history..." Section 5K2.13, again a policy statement of the now advisory Guidelines, suggests that a downward departure may be warranted where a defendant commits an offense while suffering from significantly reduced mental capacity. The policy statement suggests that the Court not depart where the reduced mental capacity was caused by the voluntary use of drugs or intoxicants. Mr. Russell's history with drug usage does not suggest that his sole problem is the use of drugs, rather there appears to be an underlying mental health problem independent of his substance abuse. While Mr. Russell's offense, an attempted robbery, is classified as a crime of violence a reading of what took place would suggest that the need to protect the public at least in this case is less that it would be in other cases of attempted robbery. Likewise the need to protect the public from Mr. Russell is not as great as it would be with regard to other people in this criminal category.

Mr. Russell may well benefit from a period of incarceration beyond the six

month sentences which have previously been given to him for his misdemeanor convictions. His stabilization on a regular routine, in an environment free of drugs and with appropriate mental health care would be to his benefit. However, the guideline sentencing range in his case is excessive given the circumstances of his case, his mental health history and the nature of his prior convictions compared to other serious violent felons who would normally appear in criminal history category VI.

FOR THE FOREGOING REASONS, defendant respectfully requests that this Court impose a sentence substantially below the proposed guideline sentencing range as set forth in the presentence report.

Respectfully submitted,

/s/Lee T. Lawless

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2005, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon, Reginald Harris, Assistant United States Attorney.

I hereby certify that on January 26, 2005 the foregoing was hand delivered to the

following non-participants in the Electronic Case Filing: Judy Holt, United States Probation Office, 111 South 10th Street, 2nd Floor, St. Louis Missouri.

/s/Lee T. Lawless

LEE T. LAWLESS 3650

Assistant Federal Public Defender